

EXHIBIT M

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

ALIGN TECHNOLOGY, INC. * August 20, 2021
 *
VS. * W-20-CV-979
 *
3SHAPE A/S ET AL *

BEFORE THE HONORABLE ALAN D ALBRIGHT
MARKMAN HEARING

APPEARANCES:

For the Plaintiff: Mark L. Levine, Esq.
 Faye E. Paul Teller, Esq.
 Matthew R. Ford, Esq.
 Bartlit Beck LLP
 54 West Hubbard Street
 Chicago, IL 60654

 John M. Hughes, Esq.
 Sundeep K. Addy, Esq.
 Bartlit Beck LLP
 1801 Wewatta Street, Suite 1200
 Denver, CO 80202

 Barry K. Shelton, Esq.
 Shelton Coburn LLP
 311 RR 620 S, Suite 205
 Austin, TX 78734-4775

For the Defendant: William D. Belanger, Esq.
 Gregory Len, Esq.
 Troutman Sanders Pepper Hamilton LLP
 125 High Street, Hight Street Tower,
 19th Floor
 Boston, MA 02110

 Massimo Ciccarelli, Esq.
 Ciccarelli Law Firm
 750 N. St. Paul St., Suite 200
 Dallas, TX 75201

1 (via Zoom) Frank Liu, Esq.
2 Gwendolyn Tawresey, Esq.
3 Troutman Pepper Hamilton Sanders LLP
4 125 High Street, Hight Street Tower
5 19th Floor
6 Boston, MA 02110

7 (Via Zoom) Kimberly Coghill, Esq.
8 Troutman Sanders Pepper Hamilton LLP
9 401 9th Street NW, Suite 1000
10 Washington, DC 20004

11 Court Reporter: Kristie M. Davis, CRR, RMR
12 PO Box 20994
13 Waco, Texas 76702-0994
14 (254) 340-6114

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16 produced by computer-aided transcription.
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1 (August 20, 2021, 9:02 a.m.)

2 DEPUTY CLERK: The Court calls 20-CV-979, Align
3 Technology, Inc. versus 3Shape A/S and 3Shape, Inc. for Markman
4 hearing.

5 THE COURT: If I could have announcements from counsel,
6 please.

7 I'm going to have to get used to this courtroom. I've
8 never -- I've been in here but never on this side before. So
9 I'm trying to figure out where everything is. It's kind of fun
10 though.

11 Mr. Shelton?

12 MR. SHELTON: Good morning, Your Honor. Barry Shelton,
13 Shelton, Coburn LLP, local counsel for Align Technology. We
14 have two client representatives this morning, Your Honor. To
15 my left is Jeff Comeau from Align Technology, and on Zoom, Your
16 Honor, we have Arthur Hsieh. To my right is Mark Levine,
17 Matthew Ford, Faye Paul Teller and John Hughes.

18 Thank you, Your Honor.

19 THE COURT: Welcome all. I may need Mr. Shelton, Mr.
20 Ciccarelli or someone who I know is a technical person to come
21 up here and see if they can fix this chair. Give me one
22 second.

23 Mr. Ciccarelli?

24 MR. CICCARELLI: Good morning, Your Honor. Max
25 Ciccarelli, local counsel for 3Shape. With me today is lead

1 I'm assuming the plaintiff is okay with our construction? But
2 if you're not, I'm happy to hear from you all.

3 MR. LEVINE: We are, Your Honor.

4 THE COURT: Okay. Then I'll hear from defense counsel on
5 this one.

6 MR. BELANGER: And we're -- for the same reasons we
7 discussed, we don't believe further argument's necessary at
8 this point.

9 THE COURT: Okay. Then we'll move on to C.2, which is
10 "detector configured to measure intensity of each of a
11 plurality of returned light." The Court found it was not
12 indefinite, plain and ordinary meaning. The defendants'
13 position?

14 MR. BELANGER: Same position, Your Honor.

15 THE COURT: Okay. Moving on to -- you've just become, in
16 just the space of this morning, my favorite lawyer ever.

17 (Laughter.)

18 THE COURT: And so replace -- next is H.1 "replace
19 [replacing] at least a portion..." And do we want to take that
20 one up?

21 MR. BELANGER: I believe that's plaintiff's, Your Honor.

22 THE COURT: Okay. So you weren't willing on that one to
23 just say we'll rest on our papers and move forward?

24 MR. BELANGER: We're happy with that one. Yes, sir.

25 THE COURT: Okay. I'll hear from the plaintiff on this

1 one.

2 MR. FORD: Thank you, Your Honor. And this can be
3 similarly brief. We spoke in the break about a modification to
4 the Court's proposed construction, and the parties are, I
5 believe, in agreement as to that modification.

6 And it would be to provide the context that the Court's
7 construction, tentative construction, was "register the second
8 scan data with a retained portion of the model after
9 deleting" --

10 THE COURT: Let me suggest we do this: If you all have
11 agreed to it, if you'll just submit it to -- obviously you
12 agreed to it. If you'll just submit it to us, when we put it
13 in our order, it will be whatever you say it is, if that's okay
14 with you.

15 MR. FORD: Great. Thank you. That's perfectly fine.
16 Thank you, Your Honor.

17 THE COURT: Okay. The next claim term is "determining or
18 determine a missing portion of the 3D virtual model..." Who
19 wishes to take this up?

20 MS. TELLER: Thank you, Your Honor. Faye Paul Teller for
21 Align. If I could have just a minute to get set up here.

22 THE COURT: Sure.

23 If I could ask you all something which has nothing to do
24 with this hearing.

25 (Brief off-the-record discussion.)

1 THE COURT: Well, as much as I enjoy this job, and I think
2 people know I do, when what was going to be an all-day hearing
3 turns into an all-morning hearing, I have to say that's pretty
4 good too.

5 So thank you all for being here. I had forgotten how much
6 I enjoyed being in person and having good lawyers in person.
7 That you would come down from Boston is a great honor for me.
8 And this is the first time I've gotten to sit in this courtroom
9 ever. So it's pretty cool as well. So I told Sam Sparks I was
10 going to be in his courtroom, and what he said is not really
11 something I can say --

12 (Laughter.)

13 THE COURT: -- on the record. And so those of you who
14 knew Judge Sparks have an idea of what I mean.

15 So thank you all for being here. Have a good weekend.
16 Remember, I'm happy to be as involved in this case as you need
17 me to be on any issues that come up.

18 You will not be -- you'll not be required to mediate this
19 case. I am the non-mediation judge. I like trials. I hope
20 this does go to trial, even though I think it's -- for your
21 clients it's almost always better for cases to settle. I mean,
22 I think ultimately that's a very good thing. But for my sake,
23 nothing would make me happier than for us to be together for a
24 week or so in trial.

25 So have a good weekend.

1 (Hearing adjourned at 10:48 a.m.)
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1 UNITED STATES DISTRICT COURT)
2 WESTERN DISTRICT OF TEXAS)
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4 I, Kristie M. Davis, Official Court Reporter for the
5 United States District Court, Western District of Texas, do
6 certify that the foregoing is a correct transcript from the
7 record of proceedings in the above-entitled matter.

8 I certify that the transcript fees and format comply with
9 those prescribed by the Court and Judicial Conference of the
10 United States.

11 Certified to by me this 21st day of August 2021.

12
13 /s/ Kristie M. Davis
14 KRISTIE M. DAVIS
15 Official Court Reporter
16 800 Franklin Avenue
17 Waco, Texas 76701
18 (254) 340-6114
19 kmdaviscsr@yahoo.com
20
21
22
23
24
25

KRISTIE M. DAVIS, OFFICIAL COURT REPORTER
U.S. DISTRICT COURT, WESTERN DISTRICT OF TEXAS (WACO)